6. Tenancy in Common (§ 15*)—Conveyance under Warranty Deed—Adverse Possession.—Where a tenant in common, after partition of a part of the common property, received a deed to a specified part, purporting to convey the fee, and entered, not as a tenant in common, but as an owner of the entire property, and there was nothing to show that either he or those claiming under him ever acknowledged that the title was anything other than as appeared from the face of the deed, it will be presumed that he entered under the title which the deed purported to convey, both as to the boundary of the land and the nature of his title, and he and his successors, having held the land for more than 30 years, and paid taxes thereon as the owners of the fee, acquired title as against the other tenants by adverse possession, both as to the surface and subjacent mineral.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 42-53; Dec. Dig. § 15.* 8 Va.-W. Va. Enc. Dig. 127; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

7. Adverse Possession (§ 106)—Color of Title—Mineral Interest.—Where defendants and their grantors, since 1880, had held possession under a deed purporting to convey the entire fee with covenants of general warranty, which deed constituted color of title, they acquired title to the surveys and to the underlying minerals by adverse possession as against claimants under a prior deed of an undivided mineral interest in the land from the common grantor.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 604-623; Dec. Dig. § 106.* 1 Va.-W. Va. Enc. Dig. 206; 41 Va.-W. Va. Enc. Dig. 23; 15 Va.-W. Va. Enc. Dig. 26.]

Appeal from Circuit Court, Wise County.

Suit by the Virginia Coal & Iron Company against George W. Hylton and others. Judgment for defendants, and complainant appeals. Reversed, in part, and affirmed in part.

Bullitt & Chalkley, of Big Stone Gap, for appellant.

Vicars & Peery, of Wise, and *Henry & Graham*, of Tazewell, for appellees.

STONEGAP COLLIERY CO. *v.* KELLY & VICARS.

Sept. 11, 1913.

[79 S. E. 341.]

1. Landlord and Tenant (§ 37*)—Construction of Lease—Construction against Lessor.—The language of a lease is to be construed most strongly against the lessor.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. § 98; Dec. Dig. 37.* 9 Va.-W. Va. Enc. Dig. 129.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

2. Landlord and Tenant (§ 37*)—Construction of Lease—Intent of Parties.—The intention of the parties to a lease must be ascertained by reference to the entire instrument and not to disjointed parts of it.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. § 98; Dec. Dig. § 37.* 9 Va.-W. Va. Enc. Dig. 129.]

3. Mines and Minerals (§ 62*)—Lease—Purpose of Use—Restrictions in Lease.—Where certain contiguous tracts of land were leased to a company for the purpose of mining coal and manufacturing coke thereon, and the lease provided that all the rights which had been granted to the lessors by the grantors of the several tracts for any land, coal, surface, or mining rights and privileges not excepted or reserved should pass to the lessee, the lessee could, under the lease, construct thereon buildings for the future use of its employees and, pending such use, lease the buildings to another company without accounting to the lessors for the rent thereof.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. 173, 175-180; Dec. Dig. § 62.* 9 Va.-W. Va. Enc. Dig. 834; 14 Va.-W. Va. Enc. Dig. 717; 15 Va.-W. Va. Enc. Dig. 681.]

4. Landlord and Tenant (§ 134*)—Purpose of Use—Implied Restrictions.—Equity will not raise by implication a covenant in restraint of a beneficial use of leased premises.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 482-485; Dec. Dig. § 134.* 9 Va.-W. Va. Enc. Dig. 129.]

5. Landlord and Tenant (§ 134*)—Purpose of Use—Implied Restrictions.—A covenant that premises shall be used for a specified purpose does not impliedly forbid their use for a similar lawful purpose which is not injurious to the rights of the landlord.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 482-485; Dec. Dig. § 134.* 9 Va.-W. Va. Enc. Dig. 129.]

6. Mines and Minerals (§ 62*)—Lease of Mine—Purpose of Use—Incidental Use.—Where a lease of premises limits the use to coal mining, the right to use the premises in all ways which are customary in carrying on those operations is necessarily incidental to the lease.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. §§ 173, 175-180; Dec. Dig. § 62.* 9 Va.-W. Va. Enc. Dig. 834; 14 Va.-W. Va. Enc. Dig. 717; 15 Va.-W. Va. Enc. Dig. 681.]

7. Mines and Minerals (§ 62*)—Lease—Purpose of Use—Intention of Parties.—Where the lessees of premises for the purpose of coal mining required the lessors to purchase certain tracts of land adjacent to the premises and include those tracts in the lease, although there was neither coal nor timber thereon, that fact indicates that it was the intention of the parties that the use of the premises was not to be limited to strictly mining operations.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. §§

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

173, 175-180; Dec. Dig. § 62.* 9 Va.-W. Va. Enc. Dig. 834; 14 Va.-W. Va. Enc. Dig. 717; 15 Va.-W. Va. Enc. Dig. 681.]

Appeal from Circuit Court, Wise County.

Suit by Kelly & Vicars against the Stonegap Colliery Company. Decree for the plaintiffs, and defendant appeals. Reversed, with directions to dismiss the bill.

Bond & Bruce; of Wise, *Bullitt & Chalkley,* of Big Stone Gap, and *White & Case,* of New York City, for appellant.

Geo. C. Perry and *E. M. Fulton,* both of Wise, for appellees.

STEELE'S ADM'R *v.* COLONIAL COAL & COKE CO.

Sept. 11, 1913.

[79 S. E. 346.]

1. Railroads (§ 282*)—Injuries to Licensee—Sufficiency of Evidence—Negligence.—In an action for the death of a coal miner who was killed by being knocked from the platform of an engine, where he was riding for his own convenience, by the impact of an engine of the defendant company with a car coupled to the engine on which he was riding, evidence held insufficient to show any actionable negligence on the part of the employees of the defendant company.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 910-923; Dec. Dig. § 282.* 11 Va.-W. Va. Enc. Dig. 597; 14 Va.-W. Va. Enc. Dig. 868; 15 Va.-W. Va. Enc. Dig. 849.]

2. Trials (§ 156*)—Demurrer to Evidence—Determination.—Where deceased was killed by being thrown from the platform of a dinkey engine, on which he was riding, by the impact of another engine against a car, from which the dinkey had just been uncoupled, but the evidence failed to show whether it was before or after the dinkey was put in motion, it will be assumed on demurrer to the evidence that it was afterwards.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 524; 14 Va.-W. Va. Enc. Dig. 331; 15 Va.-W. Va. Enc. Dig. 282.]

3. Negligence (§ 121*)—Actions—Presumption and Burden of Proof.—Negligence will not be presumed in an action to recover damages for personal injuries; but the burden is upon the plaintiff to prove it by a preponderance of the evidence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 217-220, 224-228, 271; Dec. Dig. § 121.* 10 Va.-W. Va. Enc. Dig. 402; 14 Va.-W. Va. Enc. Dig. 771; 15 Va.-W. Va. Enc. Dig. 730.]

4. Negligence (§ 1*)—Actions—Assumption of Risk.—No cause of

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.